(2011) 08 DEL CK 0478

In the Delhi High Court

Case No : FAO 479 of 2002

Smt. Rajesh and Others — APPELLANT

Vs

Sh. Heera Lal and Others — RESPONDENT

Date of Decision : 02-08-2011

Acts Referred:
Motor Vehicles Act, 1988 — Section 163A, 166

Citation : (2011) 08 DEL CK 0478

Hon'ble Judges : Reva Khetrapal, J

Bench : Single Bench

Advocate : Ashok Popli and Navneet Goyal, for the Appellant; Ram N. Sharma, for the Respondent No. 3 - Insurance Company, for the Respondent

Final Decision : Allowed

Judgement

Reva Khetrapal, J.—The Appellants in this appeal seek to assail the judgment and award dated 29.05.2002 passed by the Motor Accident Claims Tribunal, Delhi awarding compensation to the Appellants in the sum of Rs. 5,51,384/- (Rupees five lakh fifty one thousand three hundred and eighty four only) for the untimely demise of Sh. Naresh Kumar (hereinafter referred to as "the deceased") in a motor vehicular accident, which took place on 30.1.96.

2. A three-fold grievance has been raised by Mr. Ashok Popli, the learned Counsel for the Appellants with regard to the manner of computation of the award amount by the learned Tribunal. The first contention of the learned Counsel for the Appellants is that though the Tribunal had rightly estimated the salary of the deceased constable in the sum of Rs. 4,744/- (Rupees four thousand seven hundred and forty four only) per month after adding 50% to his actual salary on the date of the accident, that is, Rs. 3,163/- (Rupees three thousand one hundred and sixty three only) per month, the Tribunal erred in making the deduction of one-third towards his personal and living expenses. According to Mr. Popli, keeping in view the fact that the Appellant left behind him his young widow, two minor sons and parents, a deduction of not more than one-fourth of

the salary of the deceased ought to have been made by the learned Tribunal for arriving at the figure constituting the loss of dependency of the Appellants. I am inclined to agree with this contention of the learned Counsel for the Appellants, which is in consonance with the guidelines laid down by the Hon''ble Supreme Court in the case of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, with regard to the manner in which the deduction is to be made towards the personal and living expenses of the deceased. In the said case, it was observed as follows:

Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in Trilok Chandra, the general practice is to apply standardized deductions. Having considered several subsequent decisions of this Court, we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third (1/3rd) where the number of dependent family members is 2 to 3, one-fourth (1/4th) where the number of dependant family members is 4 to 6, and one-fifth (1/5th) where the number of dependant family members exceed six.

3. Calculated in the aforesaid manner and after deducting one-fourth (1/4th) of the income of the deceased towards his personal expenses and maintenance, the loss of dependency of the Appellants comes to Rs. 3, 558/- (Rupees three thousand five hundred and fifty eight only) per month, that is to say, Rs. 42,696/- (Rupees forty two thousand six hundred and ninety six only) per annum.

4. The second contention of Mr. Popli on behalf of the Appellants is with regard to the appropriate multiplier to be adopted for augmenting the annual loss of dependency of the Appellants. It is his contention that having regard to the fact that the deceased was admittedly 28 years old at the time of the accident, the multiplier of 18 would be the appropriate multiplier as set out in the II Schedule to the Motor Vehicles Act, 1988 and that the trial court erred in applying the multiplier of 14 on the basis of the judgments of this Court in the cases of Pragya Chopra and Ors. v. Ranjeet Singh and Ors. 2002 IV AD (Del) 302; and Sukarma Kher and Ors. v. N.K. Nagin Chander and Ors. 2002 IV AD (Del) 337.

5. As regards the multiplier, I am of the view that though the trial court erred in applying the multiplier of 14 for the purpose of computing the loss of dependency of the Appellants, however, the multiplier of 18, which is sought to be pressed into service by the learned Counsel for the Appellants is also not the appropriate multiplier in the present case. Had the petition been filed u/s 163-A of the Act, the said multiplier would have been the appropriate multiplier but keeping in view the fact that the present petition is one u/s 166 of the Act, the appropriate multiplier would be the multiplier of 17, which is the tabulated multiplier by the Supreme Court in the case of Smt. Sarla Verma (supra) for the age group of deceased between 26 to 30 years of age. Thus calculated, the total compensation payable to the Appellants comes to Rs. 42, 696/- X 17 = Rs. 7,25,832/- (Rupees seven lakh twenty five thousand eight hundred and thirty

two only).

6. The third and the last contention of the learned Counsel for the Appellant is that apart from awarding a sum of Rs. 25,000/- (Rupees twenty five thousand only) towards the loss of consortium to the widow of the deceased, the learned Tribunal has not awarded any non-pecuniary damages to the Appellants such as those under the heads of loss of love and affection, loss of estate of the deceased and funeral expenses of the deceased. Indisputably, in my view, the Appellants are entitled to the award of damages under the aforesaid heads and accordingly a sum of Rs. 10,000/- (Rupees ten thousand only) under each of the aforesaid heads deserves to be added to the award amount. The total compensation payable to the Appellants, thus, works out to be Rs. 7,80,832/- (Rupees seven lakh eighty thousand eight hundred and thirty two only).

7. In view of the aforesaid, the award amount is enhanced by the sum of Rs. 2,29,448/- (Rupees two lakh twenty nine thousand four hundred and forty eight only), which may be rounded off to Rs. 2,30,000/- (Rupees two lakhs and thirty thousand only). Interest on the aforesaid sum of money shall be payable at the rate of 7.5% per annum from the date of the institution of the petition till the date of payment.

8. The Insurance Company shall deposit the award amount within a period of 30 days from the date of passing of this award, failing which it shall be liable to pay interest at the rate of 12% per annum till the realization of the award amount. On the deposit of the award amount, the learned Tribunal shall pass orders with regard to the apportionment and disbursement of the same to the Appellants.

9. The appeal is allowed in the above terms.

10. Records of the learned Tribunal be sent back to the learned Tribunal forthwith with a copy of this order.